

SUMMARY OF LAWS

DIRECTLY AFFECTING PRIVATE DETECTIVES AND PRIVATE SECURITY PERSONNEL

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The law which directly affects private detectives and private security personnel is contained in Section 440.26, Wisconsin Statutes. Chapters RL 30 to RL 35 of the Wisconsin Administrative Code contain the rules which regulate private detectives, private detective agencies and private security personnel. There are other statutes and rules in this booklet which are related to the practice of private detectives and private security personnel. and such persons must be aware of these laws as they apply to the specific practice of such persons

CHAPTER 1

WHEN IS A LICENSE OR PERMIT REQUIRED?

- A. Private Detectives. See Section 440.26 (1) of the Wisconsin Statutes and Section RL 31.01 of the Wisconsin Administrative Code on the following pages.
- B. Private Security Personnel. See Section 440.26 (5) (b) and (c) of the Wisconsin Statutes and Section RL 31.01 of the Wisconsin Administrative Code on the following pages.

CHAPTER 2

BECOMING LICENSED OR RECEIVING A PERMIT

- A. Private Detectives. See Sections RL 31.02, 31.03, 31.04 and 31.05 of the Wisconsin Administrative Code.
- B.2 Private Security Personnel. See Sections RL 31.02 and 31.036 of the Wisconsin Administrative Code.

CHAPTER 3

RELATIONSHIP BETWEEN PRIVATE DETECTIVE AND CLIENT

A. Interviewing Prospective Clients

When a private detective first meets with a prospective client, there are numerous issues which must be clarified. For example, it is essential to discuss with the client whether or not the requested services are within the scope of the detective's practice, what the likely results will be, and the fees associated with the service. The private detective should also indicate his/her professional qualifications, the legally permissible services which can be performed and explore the client's motivation for seeking services. By discussing all of these issues, the potential client will be in a better position to understand his/her role and your services, and make an informed decision on whether or not to hire a private detective.

B. Establishing Guidelines

Once a potential client has decided to enlist the services of a private detective, there are several other steps which should be followed. A contract between the agency and the client is an important step to be implemented because it is the best way to identify

the work that is to be completed and estimate the fees that will be associated with the work. Also, a schedule should be developed for reporting information to the client. In standard situations, private detectives should report information to the client verbally and in writing at the conclusion of the service. The written report is the best way to inform clients of the services that have been provided. This written report should be in a grammatically

correct form with direct reference to facts supported by field notes. In many instances, the client may want to remain informed on a more frequent basis. If this is the case, guidelines should be established in advance by the private detective and the client which outline the time frame for reporting information to the client. The private detective should avoid advising a client in areas relating to legal matters.

In instances where the client's attorney retains the private detective, the guidelines that are to be followed should be established with the attorney. It is important to recognize that the person who establishes the contract with the private detective is the client and all information should be directed to that person. However, when an attorney is working for the same client on the same case that the private detective is, lines of communication should be developed to ensure the most effective results. The attorney may want to consult with the private detective regarding the impression a potential witness interviewed by the private detective is likely to make on the jury. By not communicating effectively, much information may be overlooked which might influence the results of the investigation.

C. Expectations

When a private detective is hired by a client, there are numerous expectations that should be met. For example, when a private detective is hired by an individual who is a defendant in a criminal case, the objective is to gather information which might support a theory of defense. When the client is a retail establishment with theft problems, the objective may be to determine ways to eliminate the theft problem and/or to catch the thief. It is essential that the private detective realize that with different clients there will be different objectives and expectations and that these objectives and expectations will influence the work that is done. If the investigation reaches a point where the private detective feels further efforts will not be of benefit, the private detective should inform the client or attorney of this and let them decide whether or not the investigation should proceed.

CHAPTER 4

GATHERING AND PRESERVING EVIDENCE

A. SUGGESTIONS FOR FIELD NOTE TAKING

Accurate, thorough note taking when on assignment is very important. Whether you are gathering information, carrying on surveillance, or performing a protective service, you should not rely on your memory. You may be asked to recall an incident a long time after it has occurred. Without adequate notes, you cannot give an accurate report.

Here are some suggestions:

1. Be specific

When someone is interviewed, get the person's full name and address and phone number, if possible.

When observations are made of an unknown person or persons, write down as thorough a description as possible. Always record date and time of observations and incidents. Record license plate numbers and descriptions of vehicles -- type, make, color.

Note an observation or incident carefully and in sufficient detail so that if writing the report is delayed, the notes will be adequate

to provide a basis for the report without relying too heavily on memory.

Whenever it is relevant, note the weather or other conditions which could aid or hinder observation such as available light, distance of the observer from the transaction, etc.

When reviewing records and documents, thorough notes should be taken because they may often reveal potential leads and contacts. If specific notes aren't taken, it becomes time consuming to backtrack records and documents in search of information that is needed.

2. Be accurate

Take the time to get the correct spelling of the name and the correct numbers in an address or phone number. A little extra time taken to be accurate when notes are made will save a great deal of time that could be wasted later trying to correct an error.

It is always preferable to make observations in neutral, descriptive terms rather than in opinions. For example, it is better to report: Her clothes were wrinkled and dirty. He was unshaved. Her hair was uncombed -- than to simply write: He or she looked like a bum or whatever.

B. REPORT WRITING

Before beginning the report, it is important to consider the nature of the case, because this determines the content of the report. There are many kinds of reports. Plan and write the report to fulfill its purpose. Some reports will be very brief descriptions of one day's activities and observations. Some will require evaluation of a situation or procedure. While writing, keep in mind the reason you are collecting the information.

The first step in writing the report is to organize your notes. Detailed notes of all findings, contacts, and materials should be maintained to be included in the written report. Organize your notes in a logical order according to time, place, person and issue.

Be Complete. Include all necessary information including the sources of information. Make your report as specific as possible. Consider whether the report answers all questions the reader may raise. However, avoid being too wordy. Do not try to impress the reader except with the thoroughness of your work. Do not express opinions on the information unless your opinion has been requested.

Be Clear. Consider whether the reader will understand the ideas expressed by the words you use. Does each sentence express a complete thought? Does each paragraph contain one main idea?

Be Accurate. Be sure that information is correctly transferred from notes to report. Check to see that the report is free from errors in grammar.

Reports should only be provided to the attorney who has retained you or to the client if no attorney is involved.

C. STATEMENT TAKING

A statement is a written or oral assertion of certain facts pertinent to an investigation. The primary elements of a good statement are that it is voluntarily given, accurate, and properly validated. At a minimum, you should obtain the name, address, and date of birth of the statement giver, as well as their signature and a witness's signature. (It is advisable that you inform the statement giver that she/he is under no obligation to provide a statement and that any statement given could be used in legal proceedings.) The interview or statement session should be held in a private place free from interruption, where the person can present information freely. Witnesses should be interviewed separately, so that the testimony of one does not influence another. The investigator should refrain from influencing the content of the statement and should at all times appear to be simply seeking relevant facts. If the person is reluctant to provide information, it is appropriate to

appeal to their sense of fairness and honesty in order to get them to continue the interview. If a person is genuinely uncertain of something, they should be allowed to simply state this. If at any point the person wishes to end the interview, the investigator should comply. To ensure the accuracy of the statement, the statement giver should review the statement. All statements should be signed, and supporting documents along with third party references in the statement will increase the validity and credibility of the statement. If the statement is sworn before a notary public, it is called an affidavit. Statements from juveniles require the prior permission of the representing attorney. Once a statement has been taken and included in a formal report, it can only be released to your client and his/her attorney, unless legal action allows or requires further release. In general, the specifics of any investigation should be considered confidential and shared only with your client and her/his attorney.

D. EVIDENCE

This section describes some elementary rules of evidence with which a private detective should be familiar. There are basically three types of evidence: testimonial, real and documentary. Testimonial evidence is evidence which comes from the statements of witnesses or potential witnesses. Real evidence is physical evidence - tangible objects that are somehow related to an issue being tried in court. Documentary evidence is similar to real evidence, but it consists of a written materials or representations (e.g., will, deed, contract, picture, etc.) rather than a tangible object. All evidence is either direct or circumstantial.

1. Direct and Circumstantial Evidence

At trial, each item of evidence is offered for the purpose of proving a point. Direct evidence is evidence which itself proves the point if the evidence is believed. Circumstantial evidence is evidence which tends to prove the point if it is believed. Circumstantial evidence is information from which a person must reason that a point is proved. For example, if a witness testifies that he saw "A" stab "B" with a knife, this testimony is direct evidence that a stabbing took place and that "A" did it. On the other hand, if it is known that a stabbing took place and a witness testifies that he saw "A" run from the scene, this is circumstantial evidence that "A" did the stabbing. It is necessary to reason and conclude that if "A" ran from the scene, he is the guilty person.

2. Real or Documentary Evidence

Objects which act as real or documentary evidence may be direct or circumstantial evidence. For example, in a trial involving a dispute over a contract, the contract would itself be direct evidence of the terms of the agreement. If a stolen item is found in the possession of an employee, this is circumstantial evidence that this employee stole the item.

Real evidence presents particular problems for the private detective. Before real evidence will be admitted at trial, it must be shown to be authentic. This means testimony must be presented to show that this item is the actual item that is involved in the issues at trial. Furthermore, it must be shown that the item has not been changed or tampered with. This is significant for the private detective. Whenever you collect real evidence, you must be concerned with keeping it intact. If evidence is removed from the scene of a crime, you should first photograph the scene and then sketch the area with the evidence located in the sketch. When the evidence is presented in court, you will be called upon to testify as to how you handled the evidence. The record of how the evidence was handled or transferred is known as the chain of evidence, and is essential in determining the admissibility of evidence in a court. You should be able to positively identify the item. You should be able to testify that you handled the item so as not to damage or to change it in any way. It is recommended that the least possible number of people come in contact with the item, and that the item be kept in a secure place. Each person who comes in contact with the item will have to testify. If it cannot be shown that the item presented in court is the original item unchanged, it may be ruled not admissible as evidence.

3. Hearsay

As the jury system developed, there also developed rules of evidence designed to prevent unreliable evidence from reaching the jury. The most significant for the private detective, and probably the best known is the rule against admission of hearsay evidence. Generally speaking, hearsay evidence is a repetition of what the witness has heard from others or has read. It does not represent the actual knowledge of the witness.

There are several reasons for the rule against hearsay evidence. First, it is known that when information passes from one person to another, it frequently becomes changed. This makes it less reliable because it is likely to be inaccurate. Hearsay evidence is also objected to because statements made out of court are not statements made under oath. The speaker was not sworn to tell the truth when he or she made the statement. Furthermore, there is no opportunity to cross-examine the actual speaker to test his or her powers of observation and his or her memory. This is probably the strongest objection to hearsay evidence. Also, the jury is not able to observe the appearance of the actual speaker. The witness' appearance is often an important consideration in judging the believability of the witness.

There are some exceptions to the rule against hearsay evidence. Certain kinds of hearsay are admissible. For instance, a statement made out of court by one of the parties in a court action is admissible. A party to the court action can hardly object that he had no opportunity to cross-examine himself or that he is unworthy of belief except when he speaks under oath. Other exceptions to the rule against hearsay evidence include declarations made by a person who is dying, confessions, public records and business entries made in the regular course of business. These are all felt to be reliable for various reasons.

The significance of the rule against hearsay evidence is this. Whenever you are directed to gather evidence, you should keep in mind what information will be admissible and how it can be made admissible if it becomes necessary. For example, if you interview someone and gain some relevant information, you must be aware of the limits of that information. You may act on the information. You may report it to your employer. You may follow up on it and thereby learn further information. However, you may not, as a general rule, testify to it in court unless it falls within one of the exceptions (e.g., statement by one of the parties). This would be hearsay. The information may be testified to in court only by the person who originally observed or heard it. For this reason, when you report to your employer, you should report your sources of information as well as your information, and you must report your sources thoroughly so they can be located if that becomes necessary.

E. PREPARING FOR GIVING TESTIMONY

Whenever you are called upon to give testimony, there are certain rules of evidence which you should keep in mind. A witness is permitted to testify only to facts of which he or she has personal knowledge. This means that the witness may only testify to facts he or she has actually observed or perceived himself or herself. He or she may not testify to facts which others have told him or her unless the other person is a party to the court action. This would be hearsay. Testimony may also be given outside of a trial in the form of a deposition. The private investigator need not know the guilt or innocence of the accused. The most important elements for the private investigator to know are the facts regarding his/her testimony.

A witness is not permitted to give his or her opinion unless he or she is qualified as an expert in the matters on which he or she is testifying. He or she is not permitted to state his or her conclusions from the facts he or she presents. Conclusions are to be made by the jury or the judge if there is no jury.

Preparation is the best way to ensure giving good testimony. This can be done by reviewing your notes before you testify. However, if you review your notes before you testify, it is a good idea to bring them with you. You may be asked if you are

testifying completely from your own recollection or if you have refreshed your recollection with your notes. If you have used your notes to recall the facts, then the attorney for the opponent may request to see them. The attorney is entitled to do so. Give simple and direct answers, unless asked to provide further detail.

It is essential that you tell the truth when you testify and answer directly the question that is being asked. Willfully giving false statements under oath is perjury which could result in legal action against you and will also damage your future credibility as a detective and a witness. When testifying under cross examination, be concise and brief in your responses. Finally, when giving testimony at a court proceeding, dress in a professional manner. The jurors will judge you by what you say and by your appearance. Therefore, it is important that you give credible testimony, be prepared and be presentable.

F. MAINTAINING FILES

Maintaining case files is an important part of the investigative process. It is advisable that a separate file be maintained for each investigation. If this is done, all information relevant to an investigation will be readily available, even if more than one person is working on the investigation. Files should be retained well after the investigation has been completed, since a trial or other developments may require information in the file even years after completion of the investigation. Maintaining a single comprehensive file on each investigation also helps the investigator to provide an accurate account of services, when this is requested by the client.

CHAPTER 5

THE LAW - CRIMINAL LIABILITY

The law applies to the private detective just as it does to every other person. In carrying out your investigative and other duties, you will probably have more opportunities to break the law than the average person. This is because you will often be seeking evidence of wrongdoing - evidence which someone else is attempting to conceal. The following is a description of crimes of which you should be aware. Keep in mind the penalties that may follow. (The laws referred to are printed in the back of this manual.)

A. WIRETAPPING - EAVESDROPPING

Wisconsin law authorizes only a law enforcement officer or government investigator to apply for a court order permitting the interception of communications. It is a felony in Wisconsin for a private individual to intercept and/or disclose wire or oral communications. The penalty for a conviction is a fine of up to \$10,000 or imprisonment of up to five years or both. Additionally, a person who violates this law may be subject to a civil action by the person whose wire or oral communication was improperly intercepted, disclosed or used. Under this law, a private individual may not tap a telephone line. Additionally, installing a "bug" (a listening device) in someone's place of employment or home is not permitted. A person may not hire or otherwise persuade another person to intercept such communications. Furthermore, if in some way an individual comes into possession of information obtained illegally by a wire tap or a bug, that person is forbidden by law to pass it on or use it in any fashion.

A person may only record a wire or oral communication when a party to the conversation has given prior consent before the recording. When one party has given consent, no criminal charges will result. This is the only circumstance under which a communication can be recorded. The concept of a "reasonable expectation of privacy" used within the law applies to any communication whether or not that conversation takes place in an area which is "open to the public". A speaker has a reasonable expectation of privacy that the contents of any spoken communication will be confidential and will be exclusively heard by only the intended party to the communication. The use of any electronic, mechanical or other device to listen or to record any

spoken communication, unless a party to the conversation has given his consent to the use of such a device, is forbidden by law. Evidence obtained when one party to a communication has authorized the interception is not admissible in court. The Wisconsin Supreme Court has ruled that only communications lawfully intercepted under court order may be introduced in court. (See generally sec. 968.27 - 968.31, Stats.)

B. FALSELY ASSUMING TO ACT AS A PUBLIC OFFICER OR EMPLOYEE; IMPERSONATING A PEACE OFFICER

It is illegal to pose as a public officer or public employee or as a peace officer. Acting as a public officer or public employee includes seeking information from another by telephone or otherwise, by falsely identifying oneself as a public officer or public employee. For example, if you telephone someone, identify yourself as a member of the district attorney's staff and thereby obtain information, you are violating this law. If you are found guilty of this, you may be fined not to exceed \$10,000 or imprisoned not to exceed nine months, or both. (See sec. 946.69, Stats.)

Impersonating a peace officer does not require wearing a uniform. Identifying oneself verbally or with a badge or shield with the intent to mislead others is sufficient to result in a charge of impersonating a peace officer. If you are found guilty of this, you may be fined not to exceed nine months, or both. (See sec. 946.70, Stats.)

C. CARRYING A CONCEALED WEAPON

The law authorizes only a peace officer to carry a concealed and dangerous weapon. No other person is authorized to do so. A dangerous weapon is defined as any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm or any other device or instrumentality which, in the manner it is used, or intended to be used, is calculated or likely to produce death or great bodily harm. The penalty for carrying a concealed and dangerous weapon is a fine of not to exceed \$10,000 or imprisonment not to exceed nine months, or both. (See sec. 941.23, Stats.)

When an individual is charged with carrying a concealed weapon, that weapon may be seized. It will then be sent to the Crime Laboratory, a division of the Department of Justice, for examination.

D. CRIMINAL TRESPASS TO A DWELLING

It is unlawful to enter the dwelling of another person without consent. The penalty for doing so is a fine of not to exceed \$10,000 or imprisonment not to exceed nine months, or both. (See sec. 943.14, Stats.)

E. BATTERY

If you injure another while intending to injure that person or some other person, you may be charged with battery unless you had the right to use force under the circumstances. (See sec. 940.19 and sec. 940.20, Stats.)

F. FALSE IMPRISONMENT

You may not deprive another of his or her freedom without authority to do so. Detaining a shoplifter under the authority of the shoplifting statute or making an arrest under the "citizen's arrest" authority as described in the next chapter is lawful. However, the detained person may be held only as long as it takes to summon a peace officer or to transport the person to police authorities. Holding a person longer than is necessary to do this or with no intention of calling the police could result in a charge of false imprisonment. If you are found guilty of this, you may be fined not to exceed \$10,000 or imprisoned not to exceed two years, or both. (See sec. 940.30, Stats.)

G. COMMISSION EMPLOYMENT

If, as a private detective, you are employed to detect employee dishonesty and you will be paid a percentage of amounts recovered through your work or a commission basis, any settlement made with an employee or fiduciary agent who has committed a dishonest act must be approved by a circuit judge of the county where the dishonest act took place. If the settlement is not submitted for approval, any such person or employer shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined no less than \$100 nor more than \$500, or imprisoned in the county jail not less than three months nor more than one year. (See sec. 134.57, Stats.)

CHAPTER 6

THE LAW - CIVIL LIABILITY

A. USE OF UNREASONABLE FORCE

For the private detective the use of force provides the greatest danger of civil liability - being sued in court after having caused an injury. You may use force only under limited circumstances. When you use force or attempt to use force without authority to do so, you and your agency are liable for the consequences of your action.

Wisconsin law allows you to use force against another in defense of your property. You may also use force to protect the property of:

1. A member of your immediate family;
2. A person whose property you have the legal duty to protect;
3. A merchant, if you are an employee or agent of the merchant.

Only that amount of force which you reasonably believe is necessary to protect the property is permitted. According to the law, it is never reasonable to intentionally use force intended or likely to cause death or great bodily harm for the sole purpose of protecting property.

Wisconsin law also permits an individual to use force against another in self-defense. If you reasonably believe that another is threatening your health or safety or freedom, you may use only the amount of force necessary to stop or prevent harm to yourself. You and your agency may not be liable for injuries you cause if you used only a reasonable amount of force. If you overreact and use excessive force, you and your agency may be liable for the injuries you caused. For example, if you are detaining a shoplifter and the person attacks you, you may use force to defend yourself and to subdue the person you are detaining. You must not lose your temper and attempt to "get even".

You may not use force intended or likely to cause death or great bodily harm, such as a gun, unless you reasonably believe it is necessary to prevent death or great bodily harm to yourself.

You lose the right to use force against another in self-defense if you provoked the person to act against you. In this case, you will be liable for the injuries you caused.

You may use force to defend someone else if you reasonably believe:

1. That under the circumstances this other person would be permitted by law to use force in his or her own defense; and
2. That it is necessary for you to act to protect this person.

B. AGENT - AGENCY RESPONSIBILITY

When an injury occurs - physical or otherwise - the agency will be liable as well as the private detective who caused the injury. The law requires the agency to share the liability in order to assure that the injured person will be able to collect damages for his or her injury. It is far more likely that the agency will have the money to compensate an injured person than will the private detective. Requiring the agency to assume liability for its employees is also justified on the grounds that the private detective is performing the business of the agency. In fact, the Wisconsin Supreme Court has ruled that an employee is entitled to security against liability to another person arising from performance of duties. This security comes from the agency assuming responsibility for injury to other persons.

The fact that the agency is liable to persons who are injured by its employees does not entirely let the private detective off the hook, however. When the injury is caused by negligence on the part of the detective, the agency is entitled to require the detective to pay back to the agency the amount it paid to the injured person. The agency does not always seek repayment from its employees, but it is entitled to do so by law. An agency is also entitled to seek repayment from its employees when the injury occurred while the detective was violating specific instructions.

The agency is not liable for injury caused by its employee unless the employee was performing agency business when the injury occurred.

C. FALSE IMPRISONMENT

As a private detective, you and your agency may face a lawsuit for actions that fall short of causing actual physical injury. If you unlawfully interfere with the physical liberty of another, you and your agency are liable for compensatory damages. This means that the person who suffers a loss of his or her personal liberty, even though it is only temporary, is entitled to be compensated for that loss. The law provides that the individual who caused the loss of liberty shall be the one to pay.

A loss of liberty may occur when you are questioning an employee about dishonest acts and you refuse to permit the employee to leave. It may occur when you detain a suspected shoplifter without probable cause to believe he or she has shoplifted. It will occur anytime you deny a person his or her liberty without authority to do so.

You are permitted by law to detain a suspected shoplifter when you are employed by the store involved. The law provides that a merchant or his or her adult employee may detain a person whom he or she has probable cause to believe:

1. Has altered the price tag on an item or exchanged price tags on items; or
2. Has intentionally concealed unpurchased merchandise which continues from one floor to another or beyond the last station for receiving payments in a merchant's store.

Probable cause means the facts and circumstances permit a person of reasonable caution to believe that the suspected person has committed an act of shoplifting.

This detention must be done in a reasonable manner and only for a reasonable length of time to deliver the person to a peace officer or to his or her parent or guardian in the case of a minor. You must promptly inform the detained person of the purpose of the detention. You must permit him or her to make phone calls. You may not interrogate or search him or her against his or her will. (NOTE: laws authorizing use of force to protect property or in self-defense and the shoplifting law appear in the back of this manual.)

You are also authorized by law to make a "citizen's arrest". Every citizen has the authority to arrest a person he or she has probable cause to believe is guilty of a felony he or she knows has been

committed. A citizen may arrest a person who is committing a breach of the peace in his or her presence. Breach of the peace is an act which involves, threatens or incites violence.

A citizen making an arrest must clearly indicate his or her intention to the other person. He or she must indicate for what offense the arrest is being made. As soon as possible, he or she must turn over custody of the person to a peace officer. If these requirements are not met, the citizen may be liable for false imprisonment. In reality, you will seldom, if ever, use this "citizen's arrest" authority. It is customary and safer for all persons involved to leave the arrest to the police.

D. NEGLIGENCE

Negligence is another frequent source of civil liability. An individual is always liable for injuries or damage to property he or she causes by being negligent. Such injuries or damage do not necessarily stem from unlawful acts. They are the result of a lack of proper caution.

Injury through negligence can occur when you are lawfully using force against another. It can happen if you are not careful that bystanders are not injured. It can occur when an individual expects to use only minimum force against another, but through lack of caution uses greater force. For example, if you are serving as bodyguard for a popular entertainer appearing in your city, part of your duties will be to keep people from rushing the stage. Suppose that while you are attempting to block someone from reaching the stage, you knock that person down causing injury. You may be liable for that injury unless that amount of force was necessary to protect your employer or yourself.

You and your agency will also be liable for property damage that results from negligence in the performance of your duties.

E. LIBEL - SLANDER

One other area of possible liability remains to be discussed. This is verbal attack. The law provides that when an individual makes statements which question or attack the character or morality of another, that individual is liable for personal and professional injuries suffered by the other person. When that individual is a private detective, both the detective and the agency will be liable. Care must be taken when making verbal or written statements about others. An intentionally false and malicious verbal statement could constitute slander, and a similar written statement could be considered libel. The statements must be made within the hearing of other persons or be published to lead to liability. If the statements are true, then there is no liability. Here is where the private detective must be careful. Accusations and verbal abuse (name calling, obscenities and the like) which are made in public may result in a lawsuit. You may believe that confronting a suspected wrongdoer loudly in public will cause him or her to back down or to confess. You must be certain the accusation is true. Furthermore, you must remember that even if your accusations are true, you are not eligible to make further abusive statements unless those also can be proven.

This has been a brief description of the possible civil liability facing the private detective and private detective agency. Civil liability is a complex subject. In each case, the liability of the persons involved is closely related to the facts and circumstances surrounding the injury. It is suggested that when the possibility of civil liability occurs the agency or private detective may find it advisable to consult with an attorney.

CHAPTER 7

INVESTIGATIVE SERVICES

In the sections which follow, some of the various services offered by private detective agencies will be discussed. What authority the detective has in various situations will be considered. Some of the possible legal consequences of exceeding that authority will also be considered.

It is important for you to remember that the private detective license issued by the State grants no special privileges or authority to you other than the privilege to operate as a private detective. The licensed private detective has the same authority towards other persons as any other private citizen. He or she has no greater authority to arrest, search, question or use force against another person than any other citizen. A private detective is NOT a police officer. In short, a private detective must conform to all criminal and civil laws of the state and statutes and rules of the department.

A. STORE DETECTIVES

A good deal of private detective work involves retail establishments. Shoplifting has become a serious problem. Many stores contract with private detective agencies to provide investigative and protective services.

Wisconsin has a law authorizing merchants and their adult employees to detain suspected shoplifters. (See sec. 943.50, Stats.) The law is not specific as to the procedure that should be followed, however. A suspected shoplifter may be detained for a reasonable length of time. The law is purposely vague. What is "reasonable" will depend on the circumstances of each situation. There are some recommendations that can be made.

First of all, be certain of your facts. The law requires you to have probable cause to believe that the suspected person has shoplifted. To avoid liability for false imprisonment, it is a good idea to personally observe the act or assure yourself that a person who reports to you has actually seen the act. Be sure that the suspected person is thereafter kept in sight. Otherwise, the item may be returned or dropped off somewhere and you will be gravely mistaken when you confront the person.

When you approach a suspected shoplifter, it is advisable to do it quietly. It is not necessary to challenge the person loudly. In fact, from the standpoint of public relations as well as potential cooperation from the suspected person, you will be more effective if you make as little disturbance in the store as possible. Request the person to move out of the flow of traffic. Explain your reason for stopping the person.

Detaining the person a reasonable length of time means the length of time it takes to summon a peace officer. Detaining a person in a reasonable manner may depend on the circumstances. You must permit the person to make phone calls. You should not purposely make the person physically uncomfortable, such as forcing the person to remain standing, refusing to permit the person to go to the bathroom, etc.

The shoplifting law specifically forbids you to interrogate or search the person against his or her will. You may, of course, continue to question the person as long as he or she is willing to continue answering. You must be careful when questioning about a crime, however. Such questions are accusations and cannot avoid being threatening. You may not use threats, force or other coercion to obtain information.

The requirement of obtaining consent before you interrogate or search another person carries over to all other investigative activities you perform. There is no lawful authority for an individual, other than a peace officer, to search or question another. You may question a person as long as he or she is willing to answer. You may not search another person or that person's house or car or other property unless that person gives his or her consent to the search.

It is a good idea to get a consent in writing - signed by the person or to have a third person witness the verbal consent. You should not use threats or false promises to encourage a person to answer questions or consent to a search. You may obtain the information or evidence you seek; however, if you obtain it by coercion, it might not be admissible in court. Therefore, if a prosecution is your goal, you may be spoiling your chances.

B. SHOPPING SERVICES

Some private detective agencies also perform shopping services for retail merchants. When this work involves checking on employee honesty, a private detective license is required. The cautions regarding interrogations and search hold true for these activities also.

Persons employed to act as shoppers in business establishments and report on the efficiency of employees, the quality of services or the condition of the premises are not required to be licensed as a private detective.

C. SURVEILLANCE

Surveillance activities may be called for in numerous situations. Divorce actions and insurance claim actions frequently lead to a need for surveillance. Businesses, such as trucking companies, will sometimes request surveillance of their employees if stock shortages appear. Some investigations reach a point where no further progress can be made without surveillance. Unless surveillance is the clearly the best method for obtaining information, the investigator should be sure that his/her client has been notified, before using surveillance.

It is important to keep an accurate, detailed record of your surveillance activities. Your observations may be needed as evidence in court. You must be able to be as specific and certain of your facts as possible. A detailed report with place, date, time and accurate descriptions of observations will provide a basis for strong testimony in court.

If your surveillance work also involves taking photographs, remember the rules regarding physical evidence. If the photographs are to be admitted as evidence, you will have to testify as to when they were taken. You must be able to testify that they accurately represent your observations and that they have not been tampered with.

A private detective may also be engaged in activities which bring him/her into contact with police or criminal activities. A private detective has the responsibility to report any evidence of criminal activity to law enforcement authorities. Prior to a surveillance or stake out, it is also advisable to inform local authorities, so that the activities of the private detective do not become the object of a police investigation. Proper communication and interaction with law enforcement agencies can lead to exchange of information, cooperation and prevention of crime.

Under no circumstances does the private detective have the authority to enter or access private residences or property without permission while on a surveillance. Use of audio or video recording to document speech or activities which are publicly accessible is an acceptable investigative technique. Such recordings made via unauthorized access to private buildings or property are not acceptable.

D. UNDERCOVER INVESTIGATION

Businesses which are experiencing problems such as theft or other internal security problems will sometimes hire a private detective to do undercover investigation. You make your observations and gather information from your co-workers during and after working hours.

This type of investigative service calls for detailed note taking and reporting writing. You are gathering evidence which may lead to prosecution for a crime. Although you may not be called to testify, your information may be used as the basis for a further police investigation. It must be accurate. (Some agencies prefer that their detectives not testify in court after working undercover. It could expose them to retaliation by the defendant. Therefore, the police are brought in to complete the investigation and make the arrest.) Sometimes the employer will not wish to prosecute the wrongdoers. The employer may wish to simply terminate the employee. Nevertheless, your report must be accurate and thorough to avoid mistakes.

E. BACKGROUND INVESTIGATION

The private detective may be called upon to do many different types of investigations, and should know what is relevant to investigate. In evaluating the credit rating of a subject, for instance, it is important to focus on the income and debt status of the subject. Factors such as property owned, type of automobile or marital status are much less useful. Some records, such as credit reports and tax records, are not legally obtainable without written permission from the party involved.

When conducting investigations, information must be verified by the investigator. Copies of records and references should be obtained or verified personally. When reviewing police, forensic or crime lab reports, the private detective should be familiar with

acronyms and abbreviations commonly used in these reports. Although interviews are often valuable, unverified statements should not be accepted as factual. Court records, except for juvenile actions, are also available to the public and may be of use. Circuit courts have records of tax liens which have been filed against an individual and the Clerk of Courts office has information on arrests and convictions, as well as civil judgments and small claims actions. The names of property owners are listed with the Register of Deeds office. With an appropriate release for information, records on work injuries are available from the Worker's Compensation Division of the Department of Industry, Labor and Human Relations. Although the subject of a background investigation is often not aware of the investigation, there may be circumstances where the subject should be informed.